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COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

RODRIGO FABIAN GONZALEZ,

Defendant and Appellant.

C063976

(Super. Ct. No. 08F8088)

A jury found defendant Rodrigo Fabian Gonzalez guilty of 14 counts of committing lewd acts on a child under the age of 14, and found he had engaged in substantial sexual conduct in committing each offense. Sentenced to 32 years in prison, defendant appeals. He contends the trial court erred in running four of the subordinate terms consecutively.

We affirm.

BACKGROUND

The victim met defendant in December 2007, when the victim was 13 years old. Defendant sent the victim a friendship

request on the social networking website, Myspace. Defendant knew the victim's neighbor's boyfriend and he and the victim met at the neighbor's house. They talked and the victim thought defendant seemed like a nice person.

The next day, defendant and the victim met at the neighbor's house again. They were in the garage of the residence and started kissing. Defendant then pulled the victim's penis out of his pants and orally copulated him. They then went to the living room where the victim orally copulated defendant. After that, they went to one of the bedrooms, where defendant inserted his penis in the victim's anus and ejaculated.

Thereafter, the victim began meeting defendant at the neighbor's house after school. In December 2007, defendant and the victim had sexual contact with each other "more than [10] times." On each occasion, they would kiss and orally copulate each other before defendant would insert his penis in the victim's anus.

Defendant and the victim continued to see each other in January 2008 -- sometimes at the neighbor's house, and sometimes at the victim's house. They had sexual contact with each other on approximately 30 occasions (nearly every day) in January 2008. Each time, they maintained the same pattern of sexual behavior.

The victim began seeing defendant less in February 2008 because defendant's behavior struck him as consistent with stalking. They had sexual contact with each other approximately

nine times in February 2008, each time maintaining the same pattern of sexual behavior.

The victim's last sexual contact with defendant took place on March 9, 2008. On that day, they did what they usually did -- defendant orally copulated the victim (count 20), the victim orally copulated defendant (count 21), and then defendant inserted his penis in the victim's anus (count 22). Defendant also gave the victim a hickey that day. After that date, defendant continued to try to contact the victim through the Internet and cell phone text messages, but the victim was no longer interested in maintaining the relationship.

The prosecution introduced evidence of defendant's sexual misconduct with two other boys who were in their early teens at the time of the misconduct.

The jury found defendant guilty of three counts (counts 1-3) of lewd and lascivious conduct with the victim on December 8, 2007, eight counts (counts 4-11) of lewd and lascivious conduct with the victim in January 2008, and three counts (counts 20-22) of lewd and lascivious conduct with the victim on March 9, 2008.¹ The jury further found defendant had engaged in substantial sexual conduct in committing each offense.

Sentencing defendant to consecutive terms for an aggregate of 32 years, the trial court provided the following reasoning:

¹ The jury deadlocked on counts 12-19 for acts alleged to have occurred in February 2008 and the trial court declared a mistrial as to those counts.

"THE COURT: The Court has considered the testimony provided at this hearing as well as arguments of counsel.

"The Court does find that there is a basis for which to apply consecutive sentences to this case in that the events that were committed in this case were committed at different times.

"The victim's testimony was significant to the Court in that the victim testified that in December, this series of conduct which happened beginning with kissing, oral copulation of the victim to defendant and then the defendant to the victim, occurred ten times.

"In addition he stated at one point -- I believe it was in December -- that that is when the sodomy began to occur between the defendant and the victim.

"The victim testified that in January, these events occurred on almost a daily basis. I believe the victim even said it occurred 30 times. Seven counts were charged for the month of January, well short of the 30 times that the victim stated these types of events had occurred.

"In addition, the victim did testify as to the later events occurring in March when the defendant was back in the Redding area for a short period of time resulting in leaving a mark typically referred to as a hickie [sic] on the victim's neck resulting in allegations being reported to law enforcement.

"The Court does select for Count 1 the midterm of six years. The Court is imposing the consecutive terms on the balance of the counts for the following reasons.

"The Court has considered the nature of this offense to be serious. The length of time in which the defendant engaged in this type of conduct with this young man was considered quite lengthy in the Court's view.

"The predatory nature of the conduct by the defendant was considered by the Court. The Court found that the defendant acted in a predatory way by contacting this young man. Even once he had met this young man, whether or not this young man's My Space [sic] page represented him to be older than what he was, nonetheless the defendant admitted that when he met him on that first occasion, he recognized that [the victim] was a young man of just 13. And the Court did consider the medium to high risk finding on the Static-99." (Italics added.)

DISCUSSION

Defendant contends the trial court abused its discretion by imposing consecutive sentences on counts 2, 3, 21 and 22. Fairly read, the trial court indicated that its basis for imposing consecutive sentences was that defendant engaged in a "series of conduct" that took place over a lengthy period of time, involving numerous sex crimes committed at different times, and that defendant's conduct in contacting the victim online was predatory in nature. The court also noted that the offenses were serious and the court considered defendant's Static-99 assessment, which indicated defendant was a medium to high risk to society. The record supports the imposition of consecutive sentences.

"[T]he same factor can support numerous consecutive sentences and a single proper statement of reasons will support them." (*People v. Dancer* (1996) 45 Cal.App.4th 1677, 1696, overruled on another ground in *People v. Hammon* (1997) 15 Cal.4th 1117, 1123.)

Criteria justifying imposition of consecutive sentences include those instances wherein the crimes and their objectives were predominately independent of each other, involved separate acts of violence or threats of violence, or were committed at different times rather than being committed so closely in time and place as to indicate a single period of aberrant behavior. (Cal. Rules of Court, rule 4.425(a).) In deciding whether to impose consecutive sentences, the court may also consider any circumstance in aggravation including, inter alia, that the manner in which the crime was carried out indicates planning and sophistication. (Cal. Rules of Court, rules 4.425(b) & 4.421(a)(8).) The court may also consider "additional criteria reasonably related to the decision" of imposing consecutive sentences. (*Id.*, rule 4.408(a).)

Here, the three offenses charged in counts 1, 2, and 3 took place in three separate places and involved three separate and distinct sexual acts that were not merely incidental to or the means by which the other offenses were committed. (Cal. Rules of Court, rule 4.425(a); *People v. Reeder* (1984) 152 Cal.App.3d 900, 917.) Defendant first orally copulated the victim in the garage (count 1). He did not stop. Instead, they went into the living room where defendant then had the victim

orally copulate him (count 2). He did not stop. Instead, they went into the bedroom where defendant then sodomized the victim (count 3). The trial court acted within its discretion in sentencing defendant to consecutive terms for these three sex crimes.

Likewise, the three offenses charged in counts 20, 21, and 22 were also separate and distinct sexual acts, supporting the trial court's decision to impose consecutive sentences. Again, the crimes involved defendant's oral copulation of the victim (count 20); having the victim orally copulate him (count 21); and sodomizing the victim (count 22). The trial court also observed that defendant's conduct took place over a lengthy period of time. Thus, the court recognized that this series of crimes did not constitute a single period of aberrant behavior.

The trial court also relied on its finding that defendant acted in a predatory manner in contacting the victim online and then pursuing continued and repeated contact. This factor was properly considered as indicating planning or sophistication. (Cal. Rules of Court, rules 4.425(b) & 4.421(a)(8); see also *People v. Burbine* (2003) 106 Cal.App.4th 1250, 1262.) Even if not considered planning or sophistication under rule 4.421(a)(8), defendant's predatory conduct as described by the court could have been considered under rule 4.408(a), "additional criteria reasonably related to the decision being made."

Because "a consecutive term may be held valid even though it is supported only by some (but not all) the circumstances enumerated by the trial court," we need not consider defendant's challenges to the remainder of the trial court's reasons. (*People v. Dreas* (1984) 153 Cal.App.3d 623, 636.) Even if we were to assume that the use of the remaining factors considered by the trial court was error, it would be harmless and not reasonably probable that a different sentence would otherwise have been reached by the trial court. (*Dreas, supra*, at pp. 636-637; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

DISPOSITION

The judgment is affirmed.

MURRAY, J.

We concur:

BLEASE, Acting P. J.

HULL, J.